

## **II. REMARKS/ARGUMENTS**

### **A. Amendments to the Claims**

The application now contains 27 claims.

Claims 2-6, 8-19, 22 and 27-30 remain the same.

Claim 1 has been amended in order to better define the subject matter being claimed.

Claims 23 and 25-26 have been cancelled from the present application without prejudice.

Claims 7, 20, 21 and 24 which were cancelled in the Applicant's previous response, remain cancelled.

Claims 31-34 have been added to the present application. Support for new claims 31-34 can be found in the application as originally filed. No new matter has been added under the current amendment.

### **B. Statements of Rejection under 35 USC §103(a) and Reply**

#### **i) Rejection over Thompson et al. in view of Massey in view of McCain et al.**

In the Office Action, the Examiner has rejected claims 1-6, 8-19, 23, 25 and 27 under 35 USC §103(a) as being unpatentable over U.S. Patent 6,696,977 (hereafter referred to as Thompson et al.) in view of U.S. Patent 5,097,790

(hereafter referred to as Massey) in further view of U.S. Patent 6,119,399 (hereafter referred to as McCain et al.).

Firstly, with regards to claims 23 and 25, the Applicant respectfully submits that these claims have been cancelled from the present application, thus rendering the Examiner's rejection moot.

Secondly, with regards to claims 1-6 and 8-19 and 27 the Applicant respectfully submits that these claims are in condition for allowance over the references cited, for the reasons presented below.

Claim 1

The Examiner's attention is respectfully directed towards the following limitation of independent claim 1, as amended.

A traffic-signalling device suitable for redirecting oncoming traffic, said traffic-signalling device comprising:

- a moveable member suitable for attachment to a support, **said moveable member being formed of multiple modular components, wherein said multiple modular components can be assembled in any order in order to form said moveable member**, said moveable member being operative to move between a first position and a second position, wherein when said moveable member is in said second position said traffic-signalling device is operative to redirect oncoming traffic;
- a solar-powered drive system for causing said moveable member to move between said first position and said second position.

The Applicant respectfully submits that none of the references cited by the Examiner disclose, teach or suggest the above-emphasized limitation of amended claim 1. More specifically, neither Thompson et al., Massey nor McCain et al. disclose a traffic-signalling device comprising a moveable member "formed of multiple modular components, wherein said multiple modular components can be assembled in any order in order to form said moveable member".

In the Office Action, the Examiner alleges that it is Massey that discloses a traffic-signalling device having “modular members (column 4, lines 10-21)”.

Firstly, the Applicant respectfully submits that portions 50, 52 and 54 of the elongated arm disclosed by Massey should not be considered “modular”, since each of these components is of a different size. Secondly, the Applicant respectfully submits that portions 50, 52 and 54 must be assembled in a specific order, so as to provide an elongated arm that tapers. This is disclosed in col 4., lines 19-21 of Massey, which states that “the sections...will additionally provide the desired taper in the elongated arm”. Given that each of the portions 50, 52 and 54 is of a different size (as shown in Figures 1 and 2 of Massey) it would not be possible to assemble these portions in any random order, since this would not result in the desired taper. Moreover, by assembling portions 50, 52 and 54 in any order could result in the largest portion being located at the tip of the elongated arm, which could cause the barrier arm to be unsafe. In light of this, the Applicant respectfully submits that Massey does not teach the above-emphasized limitation of independent claim 1.

The Applicant further submits that neither Thompson et al. nor McCain et al. disclose a barrier arm formed of multiple modular components. As such, neither of these two references teaches the above emphasized limitation of amended claim 1.

Accordingly, the Applicant respectfully submits that the combination of Thompson et al., Massey and McCain et al. fails to establish a *prima facie* case of obviousness as per §2142 of the MPEP, on the basis that the references cited do not teach all the limitations of the claim when taken either individually or in combination. As such, the Applicant respectfully submits that independent claim 1, as amended, is in condition for allowance over the references cited. The

Examiner is respectfully requested to withdraw his rejection to independent claim 1.

Claims 2-6 and 8-10 depend from independent claim 1, and therefore incorporate by reference all the limitations contained therein, including the limitation identified above as being absent from all of Thompson et al., Massey and McCain et al. Accordingly, the Applicant respectfully submits that claims 2-6 and 8-10 are also in condition for allowance as being dependent upon an allowable base claim. The Examiner is respectfully requested to withdraw his rejection to dependent claims 2-6 and 8-10.

Claim 11

The Examiner's attention is respectfully directed towards the following limitation of independent claim 11.

A traffic-signalling system suitable for providing information to oncoming traffic, said traffic-signalling system comprising:

- a plurality of traffic-signalling devices, each traffic-signalling device comprising:
  - i) a moveable member suitable for attachment to a support, said moveable member being operative to move between a first position and a second position, wherein when said moveable member is in said second position said traffic-signalling device is operative to provide information to oncoming traffic;
  - ii) a drive system suitable for causing said moveable member to move between said first position and said second position;
  - iii) **a solar powered control system suitable for receiving wireless signals for causing the activation of said drive system.**

The Applicant respectfully submits that none of the references cited by the Examiner disclose, teach or suggest the above-emphasized limitation of amended claim 11. More specifically, neither of Thompson et al., Massey or McCain et al. disclose a traffic-signalling device comprising "a solar powered control system suitable for receiving wireless signals for causing the activation of said drive system".

Firstly, the Applicant respectfully submits that Massey does not disclose anything relating to solar power, and as such, does not teach the above-emphasized limitation of independent claim 1.

Secondly, Thompson et al. simply discloses solar powered warning signs. The warning signs illuminate or flash in order to advise drivers that an upcoming interchange is closed. Nowhere does this reference disclose “a solar powered control system suitable for receiving wireless signals for causing the activation of said drive system” [emphasis added]. Instead, Thompson et al. specifically states in Column 3, lines 52-55 that the drive system comprises an electric motor. Nowhere is it taught that this electric motor is activated by a solar powered control system.

Finally, with regards to McCain et al., the Applicant respectfully submits that this reference simply teaches a solar powered battery for powering an electric motor. Nowhere does this reference disclose “a solar powered control system suitable for receiving wireless signals for causing the activation of said drive system”. As such, this reference does not teach the above-emphasized limitation of independent claim 11, either.

Furthermore, on page 5 of the Office Action, the Examiner indicates that “it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant that if the drive system is solar-powered, the other components, including the control system, could take advantage of the solar-power”. The Applicant respectfully submits that the Examiner is using the benefit of hindsight in order to recreate the claimed invention. Nowhere in any of the references cited is there any motivation to combine the reference teachings in order to arrive at the claimed invention. As per *In re Gordon* 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) “The mere fact that the prior art could be so modified would

not have made the modification obvious unless the prior art suggested the desirability of the modification”.

In light of the arguments presented above, the Applicant respectfully submits that the combination of Thompson et al., Massey and McCain et al. fails to establish a *prima facie* case of obviousness as per §2142 of the MPEP on the basis that these references do not teach the above emphasized limitation of amended claim 11, when taken either individually or in combination. Thus, the Applicant respectfully submits that independent claim 11 is in condition for allowance over the references cited, and respectfully requests that the Examiner withdraw his rejection to independent claim 11.

Claims 12-19, 22 and 27-28 depend from independent claim 11, and therefore incorporate by reference all the limitations contained therein, including those identified above as being absent from the references cited. Accordingly, the Applicant respectfully submits that claims 12-19, 22 and 27-28 are also in condition for allowance as being dependent upon an allowable base claim, and respectfully requests the Examiner to withdraw his rejection to dependent claims 12-19, 22 and 27-28.

Rejection over Thompson et al. in view of Massey in view of McCain et al. in further view of Inubushi

In the Office Action, the Examiner has rejected claim 26 under 35 USC §103(a) as being unpatentable over Thompson et al. in view of Massey in view of McCain et al. in further view of U.S. Patent 5,370,201 (hereafter referred to as Inubushi).

The Applicant respectfully submits that claim 26 has been cancelled from the present application, thus rendering the Examiner's rejection moot.

**C. Acknowledgement of Allowable Subject Matter**

*Claim 29 & 30*

The Applicant gratefully acknowledges the Examiner's allowance of claims 29 and 30, as indicated on page 6 of the Office Action.

### **III. CONCLUSION**

In view of the above, it is respectfully submitted that claims 1-6, 8-19, 22 and 27-34 are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of claims 1-6, 8-19, 22 and 27-34 at an early date is solicited.

If the claims of the application are not considered to be in full condition for allowance, for any reason, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims or in making constructive suggestions so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,

  
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